

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :
: .
- versus - :
: .
JOHN RODDEN, :
Defendant :
: .
-----X

Docket#
08-cr-524 (SJ) (SMG)

U.S. Courthouse
Brooklyn, New York

January 13, 2009

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE STEVEN M. GOLD
UNITED STATES CHIEF MAGISTRATE JUDGE

A P P E A R A N C E S :

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Proceedings

1 THE CLERK: The Honorable Steven M. Gold
2 presiding.

3 Criminal Cause for a Guilty Plea, United States
4 of America v. John Rodden, docket number 08-cr-524.

5 Counsel, please state your appearances for the
6 record.

7 MR. KLEINBERG: Charles Kleinberg for the
8 United States.

9 Good afternoon, your Honor.

10 MR. DOWD: Michael Dowd for John Rodden,
11 your Honor.

12 Good afternoon.

13 THE COURT: Good afternoon.

14 Mr. Rodden, do you speak and understand
15 English?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: Now, I would like to know a little
18 bit about the procedural posture of the case. Is this
19 the defendant's second time to the courthouse but first
20 formal appearance before the Court?

21 MR. KLEINBERG: Correct, your Honor.

22 THE COURT: So that's why I have a pretrial
23 services officer in the presence of Ms. Fannie (phonetic)
24 and a pretrial services report. The defendant has been
25 interviewed.

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1 Has the defendant been processed by the marshal
2 service?

3 UNIDENTIFIED MALE SPEAKER: Yes.

4 THE COURT: Mr. Dowd, you are retained counsel
5 for the defendant?

6 MR. DOWD: Yes, sir.

7 THE COURT: And you have filed a notice of
8 appearance on his behalf?

9 MR. DOWD: I did the last time.

10 MR. KLEINBERG: If you filed one, then it's
11 there. I mean, did you?

12 THE COURT: Did you file one that got docketed
13 or you don't remember?

14 MR. DOWD: Yes.

15 THE COURT: All right. I will assume you did
16 but since I sense of touch of tentativeness and --

17 MR. DOWD: We did.

18 THE COURT: -- I will ask you to double check
19 it after today's proceeding.

20 MR. DOWD: Yes.

21 THE COURT: Certainly it's your complete
22 intention to do so and your appearance for the defendant
23 is not contingent upon any event that has not yet
24 occurred.

25 MR. DOWD: Right, Judge. Absolutely not,

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1 your Honor.

2 THE COURT: Okay.

3 MR. DOWD: I have been his lawyer for --

4 THE DEFENDANT: Eight years.

5 MR. DOWD: -- eight years and I don't expect to
6 terminate that relationship willingly.

7 THE COURT: Okay. I am sure Mr. Rodden is very
8 pleased to know that.

9 Now Mr. Rodden, you are essentially under
10 arrest.

11 THE DEFENDANT: Yes.

12 THE COURT: That being the case, I need to
13 alert you to certain constitutional rights you have. You
14 have the right to remain silent and you are going to be
15 asked a lot of questions today, but technically you don't
16 have to answer any of them.

17 And if you do choose to remain silent, you can
18 count on the fact that if your case ever goes forward,
19 the judge will instruct the jury that they can't hold
20 your silence against you when they decide what their
21 verdict should be in your case.

22 In other words, you have the right not to be
23 prejudiced if you exercise your right to remain silent
24 and decide not to say anything.

25 On the other hand, if you do speak as the

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1 papers before me indicate it's your intention to,
2 whatever you say can be used against you by the
3 prosecutor even if you say it to somebody else. The only
4 exception for all of this is if you speak to your own
5 attorney which, of course, remains confidential.

6 Do you understand all of that?

7 THE DEFENDANT: Yes.

8 THE COURT: You have the right to understand
9 what you've been accused of and the prosecution has
10 prepared a charging document which I don't think I have a
11 copy of up here but I am sure that will be remedied
12 promptly. And that tells you what the charge is. We
13 call it a felony information.

14 Have you seen that document and reviewed it
15 with Mr. Dowd and do you understand what you're accused
16 of?

17 THE DEFENDANT: Yes.

18 THE COURT: And, of course, you have the right
19 to an attorney. And to ask the Court to appoint a lawyer
20 at no cost to you if you cannot afford to retain one
21 privately by yourself.

22 Mr. Dowd says that you have retained him to be
23 your attorney and you do not seek court-appointed
24 counsel.

25 Is all of that correct?

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1 THE DEFENDANT: Yes.

2 THE COURT: Now, what brings us into the
3 courtroom today is not only all of the things I have
4 already raised but the indication I have from your
5 attorney and the prosecutor that you wish to waive your
6 right to indictment and enter a plea of guilty pursuant
7 to a written agreement you've entered into with the
8 prosecution.

9 Before we proceed any further, I need to make
10 sure that you understand that I am not the judge who is
11 presiding over your case. That's United States District
12 Judge Johnson. Judge Johnson is the one who is going to
13 decide whether any plea of guilty you might choose to
14 offer should be accepted and if it is, how your sentence
15 should be determined.

16 I'm a magistrate judge, not a district judge
17 like Judge Johnson. I do not have the authority under
18 the law to formally take those steps. If you wish, you
19 have the absolute right to present your plea of guilty to
20 Judge Johnson on another day that's more convenient to
21 him and if that's your choice, there will be no prejudice
22 to you. You will be permitted to enter a plea of guilty
23 on the same terms and conditions that are being offered
24 to you right now.

25 In the alternative though, if I have your

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1 consent and agreement, I do have the authority to be the
2 judge who listens to your plea of guilty. And if you do
3 agree to proceed before me, I will arrange for the
4 proceeding to be recorded and transcribed, so
5 Judge Johnson has a written record of everything that
6 we've said before he's called upon to decide whether or
7 not to accept your plea and how to calculate your
8 sentence.

9 Did you follow all of that?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you wish to give up your right to
12 have Judge Johnson listen to your plea and do you agree
13 to proceed instead before me?

14 THE DEFENDANT: Yes.

15 THE COURT: Are you making this decision
16 voluntarily and of your own free will?

17 THE DEFENDANT: Yes.

18 THE COURT: Have you been threatened or forced
19 in any way to agree to this?

20 THE DEFENDANT: No.

21 THE COURT: Did you review this form with your
22 lawyer and sign it near the bottom?

23 THE DEFENDANT: Yes.

24 THE COURT: Did you understand what you were
25 signing?

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1 THE DEFENDANT: Yes.

2 THE COURT: Mr. Dowd, do you know of any reason
3 why your client should not consent to proceed before me
4 for these purposes?

5 MR. DOWD: No, sir.

6 THE COURT: I find the consent of the defendant
7 knowing and voluntary. I add my endorsement to the form
8 to reflect my finding.

9 Mr. Rodden, before I can recommend to
10 Judge Johnson that he accept any waiver or plea of guilty
11 that you might choose to offer today, I am going to be
12 asking you a long list of questions. These are important
13 questions. They're designed to make sure you understand
14 what a serious decision is it you're about to make.

15 They are also designed to protect the
16 prosecution and the Court by creating a record that will
17 show, if anyone reviews it, that I explained to you what
18 your rights were, you told me you understood them and
19 that you wanted to give them up.

20 And once that happens, if you go forward with a
21 guilty plea it will be legally valid and permanently
22 binding upon you. And for that reason, I am urging you
23 to listen carefully to all of my questions. Don't answer
24 what you don't understand. Tell me you don't understand
25 the question. I will try to ask it in a different way.

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1 If you want to stop at any point to ask me a
2 question or because you would like to have a private
3 conversation with Mr. Dowd, just tell me. I will afford
4 you that opportunity.

5 Are we clear with each other so far?

6 THE DEFENDANT: Yes.

7 THE COURT: It's very important that you are
8 truthful today, and to that end I will direct that you be
9 placed under oath before we proceed.

10 **J O H N R O D D E N ,**

11 **having been first duly sworn, was examined and**

12 **testified as follows:**

13 THE COURT: Now that you've taken an oath, when
14 you answer my questions you do so subject to penalties of
15 perjury or making a false statement. Simply put, what
16 that means that if you lie to me during this proceeding,
17 the prosecutor can bring new charges against you for
18 that.

19 Are we clear?

20 THE DEFENDANT: Yes.

21 THE COURT: State your full name.

22 THE DEFENDANT: John Rodden.

23 THE COURT: How old are you?

24 THE DEFENDANT: 54.

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1 THE COURT: How far did you go in school?

2 THE DEFENDANT: To secondary school. That's
3 like -- an intermediate college.

4 THE COURT: Is English your native language?

5 THE DEFENDANT: Yes.

6 THE COURT: Are you having any problem
7 understanding me?

8 THE DEFENDANT: No.

9 THE COURT: Are you now or have you recently
10 been seeing a doctor, psychiatrist or other healthcare
11 professional for any physical, mental or emotional
12 problems?

13 THE DEFENDANT: No.

14 THE COURT: In the last 24 hours, have you
15 taken any narcotics, drugs, medicine, pills or alcohol?

16 THE DEFENDANT: No.

17 THE COURT: Have you ever in your life been
18 hospitalized for drug or alcohol abuse or mental or
19 emotional problems?

20 THE DEFENDANT: No.

21 THE COURT: Is your mind clear?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you feel healthy and focused and
24 alert?

25 THE DEFENDANT: Yes.

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1 THE COURT: And do you understand everything
2 that's happened here so far?

3 THE DEFENDANT: Yes.

4 THE COURT: I've asked you if you received a
5 copy of what we call a felony information earlier and you
6 told me that you have. The felony information charges
7 you with conspiring or agreeing to work together with
8 others between 1997 and 1999 to defraud the Internal
9 Revenue Service of the Treasury Department, an agency of
10 the United States government in connection with its
11 collection of taxes and it spells out an invoice scheme
12 that created the appearance of business expenses when, in
13 fact, there were none by which that conspiracy was
14 perpetrated.

15 Do you understand what you're accused of in
16 this document?

17 THE DEFENDANT: Yes.

18 THE COURT: This is a felony charge.

19 THE DEFENDANT: Yes.

20 THE COURT: When I say it is a felony charge, I
21 mean that it carries a potential penalty of more than one
22 year of incarceration. Because it is a felony charge,
23 you have a right under the United States Constitution to
24 have it lodged against you only by way of an indictment
25 returned by a properly constituted grand jury.

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1 This is not an indictment and this was not
2 returned by any grand jury at all. This is a piece of
3 paper prepared by an assistant United States attorney
4 like Mr. Kleinberg, perhaps Mr. Kleinberg himself, and
5 signed by the United States attorney or his designee with
6 no grand jury proceeding having been held.

7 If you do not waive your right to have an
8 indictment considered by a grand jury, you cannot under
9 our Constitution be charged with a felony like this one.
10 Only if a grand jury hears evidence presented against you
11 and returns an indictment, that is to say finds that
12 there is probable cause to believe that you committed
13 this crime could you be charged with it.

14 Now if you elect not to waive your right to
15 indictment, the prosecutor, assuming the statute of
16 limitations has not expired because of waivers that have
17 been entered with respect to it, the prosecutor could go
18 before the grand jury, present evidence against you and
19 ask the grand jury to return an indictment charging you
20 with this felony.

21 The grand jury would have at least 16 but not
22 more than 23 members. And least 12 of the 16 to 23 grand
23 jurors would have to vote that they believed there was
24 probable cause to believe you committed this crime before
25 you could be indicted for it.

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1 The grand jury might indict you. It might not
2 indict you. But if you waive your right to an
3 indictment, this piece of paper which says what the
4 charge is will be lodged against you and the case will
5 proceed against you on the basis of this charge just as
6 though you had been indicted by a grand jury, even though
7 there will have been no grand jury proceedings at all.

8 Did you follow all of that?

9 THE DEFENDANT: Yes.

10 THE COURT: Have you discussed carefully with
11 Mr. Dowd whether or not you should waive your right to
12 grand jury indictment?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you wish to waive your right to
15 grand jury indictment?

16 THE DEFENDANT: Yes.

17 THE COURT: Has anyone threatened you or
18 pressured you in order to get you to agree to that?

19 THE DEFENDANT: No.

20 THE COURT: Has anyone promised you anything to
21 get you to agree to waive your right to grand jury
22 indictment?

23 THE DEFENDANT: No.

24 THE COURT: Did you sign this waiver of
25 indictment form?

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1 THE DEFENDANT: Yes.

2 THE COURT: Did you review the form carefully
3 with your attorney and understand it before you signed
4 it?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you have any questions about it?

7 THE DEFENDANT: No.

8 THE COURT: Mr. Dowd, do you know of any reason
9 why your client should not waive his right to grand jury
10 indictment?

11 MR. DOWD: No, sir.

12 THE COURT: I find the waiver of the defendant
13 knowing and voluntary and I add my endorsement to the
14 waiver form to reflect that finding.

15 Mr. Dowd, have you reviewed the matter of
16 pleading guilty pursuant to this agreement carefully with
17 Mr. Rodden?

18 MR. DOWD: I have, Judge.

19 THE COURT: Does he understand the rights he'll
20 be waiving if he enters a guilty plea?

21 MR. DOWD: Yes, sir.

22 THE COURT: Is he capable of understanding this
23 proceeding?

24 MR. DOWD: Yes, sir.

25 THE COURT: Do you have any doubt about his

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1 competence to enter a guilty plea at this time?

2 MR. DOWD: No, sir.

3 THE COURT: Have you advised him of the maximum
4 sentence and fine that might be imposed, discussed with
5 him the likely operation of the sentencing guidelines and
6 alerted him to the collateral consequences of a
7 conviction?

8 MR. DOWD: I have, your Honor.

9 THE COURT: I take it the defendant is not a
10 United States citizen.

11 Is that correct?

12 MR. DOWD: That is correct, your Honor.

13 THE COURT: Okay.

14 Mr. Rodden, have you had enough time to review
15 your case very carefully with Mr. Dowd and have you done
16 that?

17 THE DEFENDANT: Yes.

18 THE COURT: Are you satisfied to have Mr. Dowd
19 be the attorney defending you in this case?

20 THE DEFENDANT: Yes.

21 THE COURT: I have already reviewed with you
22 the charge against you in the information which now has
23 the functional equivalent of an indictment because you
24 waived your right to indictment.

25 Do you have those charges clearly in your mind?

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1 THE DEFENDANT: Yes.

2 THE COURT: You have a right to plead not
3 guilty to the charge and you have that right whether you
4 committed the crime or not. Pleading not guilty is never
5 lying or misleading the Court. Every defendant has the
6 right to enter a plea of not guilty whether he committed
7 the crime he is charged with or not.

8 Do you understand?

9 THE DEFENDANT: Yes.

10 THE COURT: If you plead not guilty, then under
11 the Constitution and laws of the United States, you would
12 are entitled to a speedy and public trial by jury with
13 your attorney's assistance on all charges that are
14 pending against you.

15 Is that clear?

16 THE DEFENDANT: Yes.

17 THE COURT: At the trial, you would be presumed
18 to be innocent. The prosecution would be required to
19 overcome this presumption of innocence and to prove that
20 you were guilty by competent evidence and beyond a
21 reasonable doubt. You would have no obligation to prove
22 that you were innocent.

23 If the prosecution failed to prove that you
24 were guilty beyond a reasonable doubt, the members of the
25 jury would have the duty to return a verdict of not

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1 guilty and Judge Johnson would so instruct them.

2 Did you follow me?

3 THE DEFENDANT: Yes.

4 THE COURT: That's why juries sometimes find
5 defendants not guilty even though the jurors believe the
6 defendant probably did commit the crime he is charged
7 with. Probably is not enough for a jury to vote for
8 conviction.

9 When jurors find defendants not guilty, it
10 doesn't mean they believe the defendant is innocent
11 necessarily. Jurors understand that they cannot return a
12 verdict of guilty unless they are convinced beyond a
13 reasonable doubt that that verdict is proper.

14 Do you follow that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: If you were to proceed to trial,
17 then during the course of your trial the prosecutor's
18 witnesses would be required to come into the courtroom
19 and present their testimony against you right in front of
20 you and your attorney.

21 Your attorney would have the right to question
22 the prosecution witnesses on cross-examination. Your
23 attorney would have the right to raise objections to the
24 evidence that the prosecutor attempted to offer against
25 you. And you and your lawyer working together would have

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1 the right to call witnesses, present evidence and make
2 arguments to the jury during the course of your trial.

3 Did you follow all of that?

4 THE DEFENDANT: Yes.

5 THE COURT: At the trial, you yourself would
6 have the right to testify as a witness in your own
7 defense if you wanted to. Nobody could make you testify
8 at the trial against your will though because the United
9 States Constitution says that no one may be compelled to
10 say anything self-incriminating.

11 If you decided that you preferred not to
12 testify as a witness in your own defense at your trial,
13 Judge Johnson would instruct the members of the jury that
14 they could not take your decision to remain silent into
15 account or hold it against you in any way when they
16 decided what their verdict should be.

17 Is that clear to you?

18 THE DEFENDANT: Yes.

19 THE COURT: If you plead guilty on the other
20 hand, and Judge Johnson decides that your guilty plea
21 should be accepted, you will as a result be surrendering
22 your Constitutional right to trial and all of the other
23 rights that I've been telling you about today. There
24 will be no further trial of any kind and you will have no
25 right to appeal from your conviction.

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1 Judge Johnson will essentially find you guilty
2 based upon your admissions during this proceeding that
3 we're holding right now. That will free the prosecutor
4 of any responsibility to prove what you did.

5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: If you went to trial and the jury
8 found you guilty by their verdict, you would have a right
9 to take appeal to a higher court and ask the appellate
10 court to review the legality of all of the proceedings
11 that led to your conviction.

12 But when you plead guilty, your conviction is
13 based upon what you decided you wanted to say. Under
14 that circumstance, there is no right to an appeal to
15 review the legality of the conviction unless you can
16 establish that the proceeding in which you said those
17 things, and that's this proceeding right now, was
18 unlawful.

19 Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: If you plead guilty, I am going to
22 ask you questions about what you did in connection with
23 the charges in the indictment -- information, excuse me,
24 so that Judge Johnson and I can be satisfied that your
25 plea is based upon real facts. You do not have to answer

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1 my questions unless you wish to go forward with your
2 guilty plea.

3 But if you do answer my questions and you admit
4 your involvement in the criminal activity you are charged
5 with, you will be surrounding your constitutional right
6 against self-incrimination.

7 Do you understand all of that?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you still wish to give up your
10 right to trial and all of the other rights I've been
11 telling you about today?

12 THE DEFENDANT: Yes.

13 THE COURT: I am told you're making this
14 decision pursuant to a written agreement. I have
15 arranged for that agreement to be marked as Court Exhibit
16 1. And my clerk is going to show it to you and your
17 lawyer right now.

18 Directing your attention to Court Exhibit 1, do
19 you recognize this document?

20 THE DEFENDANT: Yes.

21 (Counsel and client confer)

22 THE COURT: Did you sign the final page?

23 THE DEFENDANT: Yes, yes.

24 THE COURT: Before you signed it, did you read
25 it?

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1 THE DEFENDANT: Yes, I did.

2 THE COURT: Did you go over it really carefully
3 with Mr. Dowd?

4 THE DEFENDANT: Yes, I did.

5 THE COURT: Did you have any questions about
6 anything it says?

7 THE DEFENDANT: No.

8 THE COURT: Anything you want to talk to
9 Mr. Dowd with about it?

10 THE DEFENDANT: No.

11 THE COURT: Everything in the agreement is
12 clear to you?

13 THE DEFENDANT: Yes.

14 THE COURT: Does this agreement contain a full
15 and accurate statement of everything you and the
16 prosecution have agreed to concerning your case? I lost
17 you with that question. I can tell by the look on your
18 face.

19 THE DEFENDANT: Well --

20 THE COURT: Does this written agreement have in
21 writing everything that you and the prosecutor have
22 agreed to in connection with your guilty plea?

23 THE DEFENDANT: Yes.

24 THE COURT: Has anyone promised you anything in
25 return for pleading guilty that is not written down in

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1 this agreement?

2 THE DEFENDANT: No.

3 THE COURT: Again, I want to make sure you have
4 the charge against you clearly in your mind; the
5 conspiracy to defraud the Internal Revenue Service of the
6 United States government. Do you have that in your mind?

7 THE DEFENDANT: Yes.

8 THE COURT: I need to review with you the
9 penalties you face if you wish to go forward with your
10 plea. The statute you're accusing of violating
11 authorizes a prison sentence that could be as long as
12 five years.

13 Do you understand me?

14 THE DEFENDANT: Yes.

15 THE COURT: In addition, it authorizes a term
16 of supervised release that could be as long as three
17 years.

18 Do you understand?

19 THE DEFENDANT: Yes.

20 THE COURT: Supervised release is a period of
21 time that will begin to run only when you finished
22 serving any prison sentence that might be imposed upon
23 you. At that point, you will be released from physical
24 custody but you won't be completely free because you'll
25 be subject to the rules and potential penalties of

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1 supervised release.

2 If you remain in the United States, they will
3 include restrictions on your right to travel freely,
4 requirements that you report on a regular basis to a
5 probation officer and that you answer the officer's
6 questions honestly and follow the officer's instructions
7 carefully. Those are some, not all of the rules you
8 would have to follow.

9 Whether you remain in the United States or not,
10 it will be a further condition of supervised release that
11 you commit no new crimes whatsoever. And if you break
12 any supervised release rule, whether in doing so you've
13 committed a new crime or not, you could be arrested,
14 brought back to our courthouse and sent back to prison
15 for up to two years on this offense with no credit for
16 the time you spent serving your original sentence or
17 while your freedoms were restricted on supervised
18 release.

19 Is all of that clear?

20 THE DEFENDANT: Yes.

21 THE COURT: You could be fined either \$250,000
22 or twice the amount made by this tax conspiracy or the
23 losses caused to the government by the tax conspiracy,
24 whichever of those three calculations is greatest.

25 Do you understand?

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1 THE DEFENDANT: Yes.

2 THE COURT: You will be required to make
3 restitution for the tax losses caused by the conspiracy
4 from 1997 through 2002.

5 Is that clear?

6 THE DEFENDANT: Yes.

7 THE COURT: You will be required to make a \$100
8 special assessment payment at or about the time you are
9 sentenced.

10 Is that clear?

11 THE DEFENDANT: Yes.

12 THE COURT: Your conviction is a basis for your
13 deportation or removal from the United States and any
14 admissions you make in my courtroom today will be legally
15 binding upon you in all future proceedings, including any
16 that might be held to determine whether you may remain in
17 or ever return to the United States.

18 Is that clear?

19 THE DEFENDANT: Yes.

20 THE COURT: Then I wish to turn your attention
21 to what we call the Sentencing Commission Guidelines.
22 These guidelines will be calculated by Judge Johnson on a
23 future day and will provide him with a range of months
24 within which the law will urge him to consider imposing
25 sentence.

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1 Have you talked to Mr. Dowd about these
2 guidelines and how they're likely to operate in your
3 particular case?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Has the government developed a
6 guideline range estimate absente the special matters
7 addressed in the agreement?

8 MR. KLEINBERG: Yes, your Honor. We estimate
9 at this time that the advisory guideline range level will
10 be level 19 based on a tax loss of over \$400,000 under
11 2(t)(4.1). And if there is a plea that's accepted today,
12 we will recommend a three point downward adjustment,
13 resulting in a level 19.

14 THE COURT: Criminal history category one?

15 MR. KLEINBERG: Again, there's an issue about
16 that because he has a related conviction in state court
17 but we're assuming criminal history category one and if
18 that's correct, it's 30 to 37 under our present estimate.

19 THE COURT: Those would be months; 30 to 37
20 months, two and a half to three years and a month.

21 MR. KLEINBERG: That's correct; yes.

22 THE COURT: Did you hear all of that --

23 THE DEFENDANT: Yes.

24 THE COURT: -- Mr. Rodden?

25 THE DEFENDANT: Yes.

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1 THE COURT: Now that's the prosecutor's
2 estimate. It may be carefully reached but it's not
3 binding on Judge Johnson. Judge Johnson will make his
4 own guidelines calculation. He hasn't done so yet. He
5 won't until he receives something we call a presentence
6 report. That hasn't been written yet.

7 Once it's ready, your lawyer and the prosecutor
8 and you will all have a chance to read it. Then there
9 will be an appearance before Judge Johnson at which you
10 may address the Court. And at that point, Judge Johnson
11 will calculate the guidelines for himself. He might
12 decide upon an even longer guideline range than the one
13 estimated by Mr. Kleinberg.

14 Is that clear?

15 THE DEFENDANT: Yes.

16 THE COURT: After the Judge decides what the
17 guideline range is, he may consider whether there's a
18 reason to impose a sentence outside the guideline range.
19 It could be longer. It could be shorter. Your agreement
20 with the prosecutor suggests the possibility that the
21 prosecution will make a motion to Judge Johnson asking
22 him to consider imposing a sentence below the guideline
23 range but it doesn't guarantee you that the prosecutor
24 will do that. This depends in part upon things that have
25 not yet even occurred.

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1 Is that clear to you?

2 THE DEFENDANT: Yes.

3 THE COURT: Even if the prosecution makes the
4 motion, Judge Johnson is not obligated to grant it. That
5 is to say, even if the prosecutor is convinced to argue
6 to the judge that you merit consideration for a sentence
7 below the guidelines, that doesn't mean that Judge
8 Johnson has to agree with that.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: No matter what sentence you
12 receive, you will have no right to say you want to change
13 your mind about having entered a guilty plea and no right
14 to challenge the legality of your conviction. The only
15 right you will have after sentencing with respect to
16 further review will be to challenge the length of the
17 sentence that Judge Johnson has imposed if you have a
18 good faith basis for believing it was unlawfully set, not
19 a challenge to the conviction that will have been entered
20 in your case.

21 Is that clear?

22 THE DEFENDANT: Yes.

23 THE COURT: You may have heard of parole.

24 Parole is a program of early release from prison from a
25 sentence but it is a state court program. This is a

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1 federal court prosecution. You will to be released early
2 from any sentence you receive on parole.

3 Is that clear to you?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you have any questions you would
6 like to ask me or discuss privately with Mr. Dowd about
7 your rights, the penalties you face, the charges against
8 you or anything else concerning this case?

9 THE DEFENDANT: No.

10 THE COURT: Is everything I've told you today
11 clear to you?

12 THE DEFENDANT: Yes.

13 THE COURT: Are you ready to enter your plea?

14 THE DEFENDANT: Yes.

15 THE COURT: Mr. Dowd, do you know of any reason
16 why your client should not offer the guilty plea
17 contemplated by his agreement?

18 MR. DOWD: No, sir.

19 THE COURT: Mr. Rodden, with respect to charge
20 of conspiracy to defraud the United States of America,
21 how do you plead; guilty or not guilty?

22 THE DEFENDANT: Guilty.

23 THE COURT: Are you making this guilty plea
24 voluntarily and of your own free will?

25 THE DEFENDANT: Yes.

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1 THE COURT: Have you been threatened or forced
2 by anyone to offer this guilty plea?

3 THE DEFENDANT: No.

4 THE COURT: Other than what's written in your
5 agreement with the prosecution, has anyone promised you
6 anything in return for your guilty plea?

7 THE DEFENDANT: No.

8 THE COURT: Has anyone promised you what
9 sentence Judge Johnson will impose in your case?

10 THE DEFENDANT: No.

11 THE COURT: What did you do that makes you
12 guilty of this offense? You can read a prepared
13 statement provided it's the truth.

14 THE DEFENDANT: From 1997 to 1998 in Woodside,
15 New York and elsewhere, I agreed with another person who
16 owned a company called Concord Flooring Systems, Inc.
17 That we should use a company that I controlled called
18 Yankee Associates to defraud the United States. We
19 agreed to impede, obstruct, and defeat the ability of the
20 Internal Revenue Service to commute, assess and collect
21 the income taxes that were due and owing from Concord for
22 the years 1997 and 1998. In particular, we agreed as
23 follows:

24 (1) Concord would issue checks to Yankee.

25 (2) I would then cash the checks, deduct a fee

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1 from the proceeds and return the balance to the owner of
2 Concord.

3 Yankee would issue invoices to Concord to make
4 it appear that the checks were for services rendered by
5 Yankee to Concord when, in fact, they were not and
6 Concord falsely claimed the entire amounts of the checks
7 as business expenses on federal income tax returns for
8 the years 1997 to 1998.

9 To help carry out our agreement in October of
10 1998, I cashed a check from Concord to Yankee in the
11 amount of \$38,888 to be cashed.

12 THE COURT: Did you know in 1997 and 1998 that
13 the reason that Concord was giving you these checks and
14 that you were returning invoices to Concord was to make
15 it appear that business expenses were incurred by concord
16 when, in fact, they were not? You understood the purpose
17 of all of this was to evade taxes at the time you were
18 doing it?

19 THE DEFENDANT: Yes.

20 THE COURT: Is there anything further the
21 government would have me inquire of Mr. Rodden?

22 MR. KLEINBERG: No, your Honor.

23 THE COURT: Mr. Dowd, unless my math is very
24 wrong the limitations period would have run unless there
25 have been waivers. Has a waiver been executed in the

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1 past?

2 MR. DOWD: Yes, there's a waiver in existence,
3 your Honor, that doesn't expire until January 15 of this
4 year. So we are within the statutory period pursuant to
5 a waiver.

6 THE COURT: And I take it that's consistent
7 with the government's understanding?

8 MR. KLEINBERG: Yes, that's correct,
9 your Honor.

10 THE COURT: Based on the information given to
11 me, I find that the defendant Rodden is acting
12 voluntarily, that he fully understands his rights and the
13 consequences of his plea and that there is a basis in
14 fact for it. I, therefore, recommend that Judge Johnson
15 accept the defendant's plea of guilty to the sole charge
16 in the felony information.

17 I assume that probation will set a sentencing
18 date.

19 MR. KLEINBERG: Yes, the one I have received
20 from chambers and I assume it's a control date is May 8,
21 2009 at 9:30.

22 THE COURT: Thank you.

23 Between now and then, Mr. Rodden, you are going
24 to be interviewed by a probation officer. The reason for
25 the interview is help the officer prepare the report that

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1 Judge Johnson will use when he decides your sentence and
2 I therefore, urge you to be as cooperative and candid as
3 possible at that time.

4 I see that I have been provided with a proposed
5 bond setting bail in the unsecured amount of \$100,000,
6 limiting travel of the defendant to the state of New
7 York, requiring that the defendant surrender any passport
8 he has to the pretrial services offices by January 21 and
9 not setting any other conditions.

10 MR. KLEINBERG: Well, your Honor, we were in
11 the -- we didn't have the pretrial services report at the
12 time we handed that up. As you came out, we were to add
13 to the report based on pretrial services recommendation,
14 the standard conditions that he report to pretrial
15 services as directed, that he be subject to random home
16 and employment visits and he be subject to random
17 substance abuse testing, evaluation and treatment as
18 deemed necessary by pretrial services.

19 THE COURT: Mr. Dowd?

20 MR. DOWD: That's fine.

21 THE DEFENDANT: That's fine.

22 THE COURT: Is there any substance abuse
23 history?

24 MR. DOWD: No, your Honor. I mean he does --

25 THE COURT: Pretrial is in the office -- I mean

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1 there's a DWI from 15, 16 years ago. Is there anything
2 else?

3 PRETRIAL SERVICES OFFICER: He actually
4 (inaudible), your Honor, and that's why that condition is
5 (inaudible).

6 THE COURT: Then we will impose it.

7 Mr. Rodden, I am going to release you on the
8 bond that we have been discussing. Let me tell you what
9 that means. If you don't come back to court whenever
10 you're supposed to, you are going to owe the United
11 States government \$100,000.

12 In addition, a warrant will issue for your
13 arrest. You will be taken into physical custody and
14 brought back to the Court in handcuffs. You will then
15 appear before a judge who will revoke this bond and
16 impose harsher bail or detain you with no bail
17 whatsoever.

18 You will also be charged with the separate
19 crime of bail jumping.

20 THE DEFENDANT: Yes.

21 THE COURT: You can be convicted of bail
22 jumping regardless of the outcome of this charge,
23 although now you'll be convicted of this charge as well.
24 If -- a conviction for bail jumping carries a mandatory
25 prison sentence that must be served consecutively to any

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1 sentence imposed in your tax case.

2 Do you understand all of that?

3 THE DEFENDANT: Yes, of course.

4 THE COURT: If you commit any crime at all
5 while you're out on bail, that will be grounds to revoke
6 your bail and to impose a harsher penalty than what would
7 otherwise apply to the new offense because you were on
8 bail when it was committed.

9 Is all of that clear?

10 THE DEFENDANT: Yes.

11 THE COURT: All right. Subject to random
12 visits, must report by telephone as directed, must
13 undergo random drug testing, evaluation and treatment for
14 substance abuse.

15 Is there anything else? Mr. Dowd, your client
16 may sign the bond where indicated.

17 MR. DOWD: Yes, sir.

18 THE COURT: Thank you.

19 (Handing)

20 MR. DOWD: Your Honor, I am returning the bond
21 to the Court.

22 THE COURT: Thank you, Mr. Dowd.

23 Is there anything further for the Court's
24 attention?

25 MR. KLEINBERG: Not from the government,

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1 your Honor.

2 MR. DOWD: Not from the defendant, your Honor.

3 THE COURT: Well then have a good day.

4 MR. DOWD: You, too.

5 MR. KLEINBERG: Thank you, your Honor.

6 (Matter concluded)

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C E R T I F I C A T E

I, ROSALIE LOMBARDI, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 23rd day of February, 2009.


Rosalie Lombardi
Transcription Plus II